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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

GERARD ST. GERMAIN et al., Plaintiffs and Respondents, v. MASTERS UNITED I, LLC, Defendant and Appellant.	D069044 (Super. Ct. No. 37-2013-00062944-CU-BC)

APPEAL from a judgment of the Superior Court of San Diego County, Frederick L. Link, Judge. Affirmed.

Law Offices of Thomas E. Francis and Thomas E. Francis, for Defendant and Appellant.

Kushner Carlson, Michael B. Kushner, Jonathan D. Kent and Daniel M. Kalinowski, for Plaintiffs and Respondents.

INTRODUCTION

Masters United I, LLC (MUI) appeals a judgment after a jury verdict in which the jury awarded Gerard St. Germain, Sean and Kelly Henry, and Victoria Gray (collectively plaintiffs), who were investors in three karate dojos,[1] damages for lost distributions after MUI unilaterally changed the name and logo of the dojos from United Studios of Self Defense (USSD) to Z-Ultimate. MUI contends the judgment should be reversed because (1) the operating agreements for the dojos permitted MUI, as the manager, to operate the dojos under any name it deemed appropriate; (2) the operating agreements limited its liability unless the jury found it acted with "fraud, deceit, gross negligence, reckless or intentional misconduct or a knowing violation of the law"; and (3) the damages award was based upon a speculative analysis of lost profits. We conclude MUI failed to meet its burden of establishing prejudicial error with respect to these contentions and we affirm the judgment.

BACKGROUND

The plaintiffs entered into operating agreements with MUI to operate a limited liability company (LLC) for each dojo location. We summarize the testimony regarding each dojo at issue in this appeal.

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1 A dojo is "a school or practice hall where karate, judo, or martial arts are taught. (Random House Unabridged Dict. (2d ed. 1993) p. 580.) The parties use the terms dojo and studio interchangeably.

A

Studio City Dojo

1

St. Germain started training with USSD in 1988 and attained a third degree black belt. He was an instructor at the San Clemente USSD dojo for several years and purchased the dojo in 1991. St. Germain left in 1992 to pursue another career.

St. Germain visited the Shaolin Temple in China with his wife in 2000. The Shaolin Temple has a close connection to USSD and recognized USSD as a contributor and "hero" of the temple. St. Germain decided to invest in the Studio City USSD dojo in 2003, and owned 25 percent. Two other investors owned 25 percent each and MUI owned the other 25 percent. St. Germain and his wife wanted to invest in USSD after their trip to China. They thought it was a good investment because USSD was doing well. To make the investment, St. Germain approached the Grand Master and chief executive officer of USSD, Charles Mattera, who referred him to Kris Eszlinger, who managed USSD dojos. St. Germain had known Eszlinger for many years since they attended the instructor's college together. St. Germain believed he was buying the license to use the USSD trademark and logo.

In September 2010 St. Germain received announcement letters indicating the brand of the dojo was changed from USSD to Z-Ultimate. St. Germain was not asked and did not agree with the decision to rebrand the dojo.

St. Germain testified the Z-Ultimate name and logo is contrary to the symbolism of the USSD logo, which involved the roots and branches of a tree. In contrast, Z-

Ultimate is about being an ultimate warrior and the Z character stands for death or decay in Chinese. St. Germain said he would never invest in such a name or symbol. The Shaolin monks published a notice of distrust of Z-Ultimate and excommunicated them.

St. Germain made money from his investment initially, but after the dojo was rebranded as Z-Ultimate in 2010 the distributions declined to nearly zero. It was no longer a good investment. He had a rate of return of 33.9 percent under USSD. His return rate fell to 1.9 percent under Z-Ultimate.

2

Donnie Jeffcoat was an instructor at the Studio City dojo from 2007 until the rebranding in 2010. He left the dojo because the students and the instructors were not happy with how the rebranding was handled.

When Jeffcoat showed up at the dojo on the day the brand changed, he was told to take his USSD patch off and to remove his USSD black belt certificate. MUI removed pages referring to USSD from the manual. Jeffcoat felt this was unethical and the students had a problem with the removal of the USSD patch. He also felt the way this was handled was contrary to the teachings of martial arts.

Jeffcoat testified the USSD patch and its symbolism was an important aspect of the mental and spiritual part of their teaching. Students were taught each element of the patch had meaning: the bonsai tree, the lines in the circles, the sunset, and the green and brown colors of the tree. He was upset the instructors, who were the faces of the teachings, did not have a say or a vote on the design of the new logo, the patch, or the

direction of the company. He thought taking the USSD patch off and replacing it abruptly without notice or explanation was a bad choice.

USSD is a large and well-respected company. Many students and their families were loyal to the patch and had respect for Grand Master Mattera. Jeffcoat felt he and other instructors were asked to lie and say the split from USSD was amicable. When the truth came out, many instructors felt there was a contrast between the principals they were teaching and how students of Mattera, including Eszlinger, "swept half of the company out from underneath" USSD. Jeffcoat left the dojo to start his own martial arts studio, taking approximately 60 percent of the Studio City students with him.

B

Agoura Hills Dojo

Sean Henry, his wife, and their son all studied at the USSD Thousand Oaks dojo. After doing research about karate studios, Henry liked the fact USSD was a well-known entity. His wife liked the fact it had a Chinese heritage.

Henry and his wife invested in the USSD Agoura Hills dojo after the manager of the Thousand Oaks dojo presented the Henrys with the opportunity. They were given an investor's guide outlining the program along with a brochure regarding the investment with USSD. The Henrys purchased 25 percent of the United Partners Agoura Hills, LLC. Eszlinger, through MUI, owned 50 percent and another investor owned the other 25 percent. Henry understood paragraph 2.3 of the operating agreement meant the purpose of the LLC formed by the Agoura Hills investors was to operate at least one USSD

studio. Henry was told they were investing in a licensing agreement. Henry testified a brand logo is one of the most important assets of a company.

Henry did not receive notice or an opportunity to vote on the rebranding. A week after the name changed, Henry received several letters in the mail. Henry would not have agreed to rebranding. The USSD brand existed for more than 20 years and it was a leader in martial arts training.

The Henrys made money after they invested in the USSD brand. Prior to the rebranding in 2010, the Henrys' average annual rate of return was about 42.5 percent. After the dojo or studio became Z-Ultimate in 2010, the average annual rate of return was 4.3 percent overall, but in the 2014 and 2015 it was zero. Henry testified he could not sell a business that was earning $200 a year or less.

C

La Mirada Dojo

Gray began taking self-defense lessons with USSD in 2000. She chose the USSD dojo because it was connected to the Shaolin Temple in China, which she liked because it consciously addressed spirituality as well as self-defense. Gray invested in the La Mirada USSD dojo in 2001 by purchasing 50 percent interest for $150,000. MUI, owned by Eszlinger, invested $5,000 for 50 percent interest.

The USSD name and structure were important to Gray. She understood the studio could not operate under another name. She would not have invested in a dojo with another name.

When Gray first invested, the dojo was not doing well and she bailed it out. Gray's investment did well at the beginning and she made money.

At Eszlinger's request, Gray sold half of her interest (i.e., 25 percent of the total interest) to an instructor at the dojo, who was good at keeping records and being efficient. The dojo became profitable under this instructor.

Gray received a form letter in September 2010 stating the name of the dojo had changed to Z-Ultimate. She received no prior notice and was not asked for her consent. Gray did not like this because she had signed up with USSD. She did not agree to the change. Eszlinger said he wanted to move away from the USSD format of martial arts. Gray testified the dojo was not as profitable in the years after the name changed.

D

Defense Evidence

Eszlinger wrote the investor's guide while he was affiliated with USSD on behalf of the USSD brand. Eszlinger admitted there were no amendments to the operating agreements for the Agoura Hills, Studio City, or La Mirada dojos.

Eszlinger agreed USSD and Z-Ultimate have different brands and different philosophies of martial arts. However, he testified they were not competitors. Eszlinger denied the change in the brand affected the revenue for the Agoura Hills dojo and the Studio City dojo.

Richard Dolan was the chief instructor at the Valencia dojo. He owned 25 percent of the Agoura Hills dojo and 25 percent of the Valencia dojo. He was away on a trip when the brand was changed and was informed about the name change by a text message

from someone who attended an instructors' meeting. He spoke to Eszlinger when he returned and agreed to the change. He believed that the cleanliness of a dojo and the instructor are more important than the sign on the door.

Enrique Gomez has been the chief instructor at the Studio City dojo since 2004. He owns 57 percent interest. He initially owned 32 percent and purchased another 25 percent interest from another investor after the name changed.

Gomez learned about the name change at a meeting at Eszlinger's studio in Anaheim. The instructors were told MUI was splitting apart from USSD based on different viewpoints. Gomez referred to Jeffcoat as an opportunist who badmouthed him and took half of Gomez's clientele. Gomez testified he spoke to Eszlinger about the change to Z-Ultimate and Gomez agreed to the change. He stated he liked the new logo and the change in the logo had no impact on the students.

E

Trial and Jury Verdict

Prior to trial, the court determined certain paragraphs of the operating agreements defining the purpose of each LLC permitted it to engage in any lawful business activity so long as it operated at least one USSD licensed dojo. The court determined this purpose could be changed by consent of the majority of the members.[2] In reaching this

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2 According to an instruction provided to the jury, paragraph 2.3 of the operating agreements for United Partners—Studio City, LLC and United Partners—Agoura Hills, LLC stated: "2.3 **Purpose.** The LLC's purpose is to engage in any lawful activity for which a limited liability company may be organized under the Act. Without the Members' consent, the LLC shall not engage in any business other than the following.

conclusion, the court noted its interpretation was the same as that of a retired judge who served as an arbitrator and a judge from Orange County in similar cases.[3]

The jury found in favor of each of the plaintiffs for breach of contract. It found MUI entered into contracts with the plaintiffs, but operated Z-Ultimate studios without maintaining at least one USSD branded studio and without obtaining an amendment to the operating agreements or consent to the rebranding. The jury found each of the plaintiffs was harmed and awarded damages as follows: (1) $78,375 in past economic loss and $80,232 in future economic loss to St. Germain; (2) $83,531 in past economic

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The business of owning and operating one (1) martial arts studios using tradename, logo and USSD business plan pursuant to USSD licensing agreement and any other purpose permitted by law, as the Manager determines."

Paragraph 2.6 of the operating agreement for United Partners—La Mirada, LLC stated: "**2.6 Purpose of Company.** The purpose of the Company is to engage in any lawful activity for which a limited liability company may be organized under the Act. The specific initial purpose of the Company is for the purchase and ongoing operation of that certain Martial Arts Studio utilizing the Business Plan of United Studios of Self Defense, Inc. …. Notwithstanding the foregoing, without the consent of the Members, the Company shall not engage in any business other than the following: [¶] A. Developing, constructing, furnishing, managing, operating, buying and selling Martial Arts Studios … utilizing the Business Plan of United Studios of Self Defense, Inc. [¶] Purchase and sales of Martial Arts equipment. [¶] C. Such other activities directly related to the foregoing businesses as may be necessary, advisable, or appropriate, in the reasonable opinion of the Members to further the foregoing business."

Based upon another provision of the operating agreement, the court concluded an amendment to the operating agreement, including an alteration of the primary purpose clauses, required written consent of the majority of members. The court left to the jury the issue of whether or not rebranding was an alteration of the primary purpose of the LLC.

[3] Neither party has provided this court with a clear record regarding the procedural history of this case. It is not apparent from the record on appeal if the same parties were involved in the prior rulings. Therefore, we cannot address the plaintiffs' contention these prior rulings were binding as a matter of law.

loss and $92,266 in future economic loss to the Henrys; and (3) $79,070 in past economic loss and $77,022 in future economic loss to Gray.

DISCUSSION

I

MUI asks us to determine if the operating agreements, read as a whole, permitted the manager to operate under a different brand name despite the language of paragraph 2.3 in the Studio City and Agoura Hills agreements and paragraph 2.6 in the La Mirada agreement, which set forth the purpose of the LLCs. However, MUI has not provided us with a complete copy of any of the operating agreements. The appellant's appendix contains an incomplete copy of the Agoura Hills operating agreement. The respondents' appendix includes an instruction submitted to the jury, which sets forth excerpts of the three operating agreements for Studio City, Agoura Hills and La Mirada dojos.

With no citation to the appellate record, the opening brief and the reply brief purport to quote various sections of the agreements, some of which appear nowhere in the record provided to this court. "Rule 8.204(a)(1)(C) of the California Rules of Court requires all appellate briefs to '[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears.' It is well established that ' "[i]f a party fails to support an argument with the necessary citations to the record, ... the argument [will be] deemed to have been waived. [Citation.]" ' [Citation.] This rule applies to matters referenced at any point in the brief, not just in the statement of facts." (*Conservatorship of Kevin A.* (2015) 240 Cal.App.4th 1241, 1253.)

"[A]ppealed judgments and orders are *presumed correct* …; and appellant has the burden of overcoming this presumption by affirmatively showing error on an *adequate record*." (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2016) ¶ 4:2, citing *Stasz v. Eisenberg* (2010) 190 Cal.App.4th 1032, 1039 [a judgment is presumed correct when appellant fails to present a complete record for appellate review].) Given MUI's failure to provide an adequate record for review and the failure to provide sufficient citations to the record provided, we presume the trial court's interpretation of the pertinent operating agreements was correct.

Even without this presumption, the portions of the operating agreements available to us support the court's conclusion. We independently review a written instrument unless conflicting extrinsic evidence was admitted. (*California National Bank v. Woodbridge Plaza LLC* (2008) 164 Cal.App.4th 137, 142.) "We must interpret a contract so as to give effect to the mutual intent of the parties at the time the contract was formed. (Civ. Code, § 1636.) 'The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.' (Civ. Code, § 1638.) Courts must also endeavor to give effect to every part of a contract, 'if reasonably practicable, each clause helping to interpret the other[s].' (Civ. Code, § 1641.)" (*Thrifty Payless, Inc. v. Mariners Mile Gateway, LLC* (2010) 185 Cal.App.4th 1050, 1060.)

The plain language of the paragraphs defining the purpose of the LLCs in each of the operating agreements indicate the LLC must operate at least one martial arts studio using the tradename, logo and business plan of USSD. This is consistent with the trial

testimony of the plaintiffs who testified they understood they were investing in a USSD studio, which was important to them.

Paragraph 2.2 in the Agoura Hills operating agreement is not inconsistent with this interpretation as it refers to the name under which the LLC may operate as opposed to the name or brand under which the martial arts studio itself operated, which is subject to the provisions of paragraph 2.3.[4] Any other interpretation of paragraph 2.2 would render the purpose provision of the agreement superfluous.

II

MUI points to paragraph 5.7 of the Studio City and Agoura Hills operating agreements and paragraph 5.3 of the La Mirada operating agreement describing the performance of duties and purporting to limit liability for any "loss or damage" unless it resulted from MUI's "fraud, deceit, gross negligence, reckless or intentional misconduct, or a knowing violation of law."[5] MUI contends the judgment must be reversed and the

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4 Paragraph 2.2 of the operating agreement for Agoura Hills provided: "2.2 **Name.** The LLC's business may be conducted under its name or, in compliance with applicable laws, any other name the Manager deems appropriate or advisable. The Manager shall file any fictitious name certificates and similar filings, and any amendments thereto, that it considers appropriate or advisable. The LLC shall maintain an office and registered agent in California as required by the Act. The Manager shall, from time to time, determine the location of the LLC's principal office and any other offices, in or outside California. Its registered agent shall be as stated in the Articles or as otherwise determined by the Manager."

5 Paragraph 5.7 of the operating agreements for Studio City and Agoura Hills stated: "The Manager shall not be liable to the LLC or any Member for loss or damage sustained by the LLC or any Member, unless resulting from material and wrongful fraud, deceit, gross negligence, reckless or intentional misconduct, or a knowing violation of law by the Manager resulting in material, adverse impact to the LLC or its Members. The Manager shall perform its managerial duties in good faith, in a manner it reasonably believes to be

matter retried because the jury was not asked on the special verdict form to make a specific finding about whether the contract provisions barred liability unless MUI acted with fraud, deceit, gross negligence, reckless or intentional misconduct, or a knowing violation of the law. We disagree.

Prior to trial, the court ruled these provisions did not bar the action as a matter of law because the evidence could show Eszlinger rebranded the dojos without consent required by the contract and in doing so he acted with intentional misconduct contrary to the terms of the contract. When MUI objected to the verdict form, the court noted it would not change its prior off-the record ruling.

" 'The use of special interrogatories in a verdict form lies within the sound discretion of the trial court, and the court's determination will not be disturbed on appeal absent a clear abuse of discretion.' " (*J.P. v. Carlsbad Unified School Dist.* (2014) 232 Cal.App.4th 323, 340.) In *Red Mountain, LLC v. Fallbrook Public Utility Dist.* (2006) 143 Cal.App.4th 333, 364-365 this court concluded a court's refusal to include specific questions about impossibility or impracticability of performance in a breach of contract

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in the LLC's and Members' best interests, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. The Manager so performing its duties as Manager shall not have any liability by reason of being or having been the LLC's Manager."

Paragraph 5.3 of the operating agreement for La Mirada stated: "A Member shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, deceit, gross negligence, reckless or intentional misconduct, or a knowing violation of law by the Member. The Members shall perform their managerial duties in good faith, in a manner they reasonably believe to be in the best interests of the Company and its Members, and with such care, including reasonable inquiry, as an ordinary prudent person in a like position would use under similar circumstances."

verdict form was not an abuse of discretion or prejudicial because the jury was properly instructed regarding the law for breach of contract. "We presume that the jury followed the instructions it was given [citation], and that it would not have found that [defendant] breached its agreement … if it had found that [defendant's] performance was impossible or impracticable."

We do not have the benefit of a complete record of either the discussion regarding the special verdict form or the complete instructions provided to the jury. As such, MUI has failed to meet its burden of affirmatively showing error with an adequate record and we may presume the judgment is correct. (*Stasz v. Eisenberg, supra,* 190 Cal.App.4th at p. 1039.)

The available record reveals the jury received a special jury instruction quoting the performance of duties sections of the operating agreements. Counsel addressed these provisions in their closing arguments. Counsel for MUI read the pertinent language to the jury. MUI's counsel argued Eszlinger obtained consent for the brand change and the plaintiffs were not harmed by the rebranding, but were harmed by changes in instructors and increased costs.

Counsel for plaintiffs argued the provisions limiting the manager's liability had no application to this case because the evidence showed a knowing and intentional breach of contract. Eszlinger admitted he did not obtain an amendment to the operating agreements for the studios at issue to rebrand the studios. He intentionally did not communicate a plan or an intention to rebrand the studios prior to the announcement of the rebranding

because he did not want Master Mattera the head of the USSD system, to catch wind of the change.

The jury rejected the defense arguments and found MUI breached its contracts by operating Z-Ultimate karate dojos without maintaining at least one USSD branded karate dojo and failing to obtain either an amendment to the operating agreements or consent to rebrand the dojo. It also found these failures resulted in harm to the plaintiffs.

Therefore, we conclude MUI "has not established prejudice as a result of any purported error in the special verdict form" because " '[a]bsent some contrary indication in the record, we presume the jury follow[ed] its instructions [citations] "and that its verdict reflects the legal limitations those instructions imposed." ' " (*J.P. v. Carlsbad Unified School Dist., supra*, 232 Cal.App.4th at p. 341 [no prejudicial error in special verdict form because the jury "necessarily found that each of the elements of estoppel had been proven"]; see *Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1245 [no miscarriage of justice if under the pleadings and evidence the same result would have been reached absent error].)

III

Finally, MUI challenges the damages awarded by the jury. Again without citations to the record, MUI generally contends the claim for lost profit was based "upon a simple comparison of revenues prior to and subsequent to 2010" without comparing the performance of USSD dojos to Z-Ultimate dojos or taking into account increases in operating expenses. MUI did not challenge the admissibility of the plaintiffs' economic expert's testimony as speculative, but cross-examined the expert on his method of

calculations. We conclude there was substantial evidence to support the damages awarded by the jury.

"Lost profits may be recoverable as damages for breach of a contract. '[T]he general principle [is] that damages for the loss of prospective profits are recoverable where the evidence makes reasonably certain their occurrence and extent.' [Citation.] Such damages must 'be proven to be certain both as to their occurrence and their extent, albeit not with "mathematical precision." ' [Citation.] The rule that lost profits must be reasonably certain is a specific application of a more general statutory rule. 'No damages can be recovered for a breach of contract which are not clearly ascertainable in both their nature and origin.' (Civ. Code, § 3301; [citation].)" (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 773-774 (*Sargon*).)

"Regarding lost business profits, the cases have generally distinguished between established and unestablished businesses. '[W]here the operation of an established business is prevented or interrupted, as by a … breach of contract …, damages for the loss of prospective profits that otherwise might have been made from its operation are generally recoverable for the reason that their occurrence and extent may be ascertained with reasonable certainty from the past volume of business and other provable data relevant to the probable future sales.' [Citation.] 'Lost profits to an established business may be recovered if their extent and occurrence can be ascertained with reasonable certainty; once their existence has been so established, recovery will not be denied because the amount cannot be shown with mathematical precision. [Citations.] Historical data, such as past business volume, supply an acceptable basis for ascertaining

lost future profits. [Citations.] In some instances, lost profits may be recovered where plaintiff introduces evidence of the profits lost by similar businesses operating under similar conditions.' " (*Sargon, supra*, 55 Cal.4th at p. 774.)

" 'Where the *fact* of damages is certain, the amount of damages need not be calculated with absolute certainty. [Citations.] The law requires only that some reasonable basis of computation of damages be used, and the damages may be computed even if the result reached is an approximation. [Citation.] This is especially true where … it is the wrongful acts of the defendant that have created the difficulty in proving the amount of loss of profits [citation] or where it is the wrongful acts of the defendant that have caused the other party to not realize a profit to which that party is entitled.' (*GHK Associates v. Mayer Group, Inc.* (1990) 224 Cal. App. 3d 856, 873–874 [permitting an award of profits calculated from a project's 'actual income'].)" (*Sargon, supra*, 55 Cal. 4th at pp. 774-775.)

At the outset, we note MUI's contention in its opening brief, made again without record citations, that there was no evidence "the brand name had anything to do with the attraction and retention of students" is inaccurate at best. The Henrys chose to train and later invest with USSD after researching the company and because of its connection to the Shaolin Temple. St. Germain, who also trained with USSD, testified that after the trip to China he and his wife wanted to invest in USSD because it was on an upswing and doing well. Jeffcoat testified the USSD logo and patch were important to the teachings of the dojo. He, other instructors, and students were upset about how the dojo was rebranded and the patches replaced. The USSD brand was also important to Gray when

she made her investment. Each of the plaintiffs testified they made money while the dojo had the USSD name and logo. They did not make as much, nearly zero in some instances, after the rebranding.

The plaintiffs presented testimony from an economic expert who analyzed financial data relating to each of the three established dojos. He calculated lost distributions by evaluating the actual annual distributions received by the plaintiffs for each dojo prior to the rebranding, comparing what they would have received if MUI had not rebranded the dojos with what they actually received after the name changed and then calculating anticipated future lost distributions. The expert analyzed the actual distributions for each dojo from 2006 through 2010, which included two years on either side of the recession, and started the damage period in 2011. He also looked at data for the fitness industry during this period, which weathered the recession well.

The expert calculated future damages on an annual basis from the time of trial over a ten-year period, which allowed the jury to choose an end point for damages. He used a conservative discount rate of 10 percent, without accounting for inflation, to calculate the present value of future lost distributions. By using a conservative discount rate, he tried to account for the risk of unknown factors, such as increases in overhead expenses. The jury awarded the plaintiffs past and future economic damages in the form of lost distributions. The jury limited the future damages award to five years.

Unlike the businesses in the cases cited by MUI, the dojos were established businesses and the expert's analysis was based upon reasonably reliable evidence. (Compare *Parlour Enterprises, Inc. v. Kirin Group, Inc.* (2007) 152 Cal.App.4th 281,

288-291 [lost prospective profits were not reasonably certain for unestablished businesses when based upon speculation rather than facts substantially similar to the business opportunity] and *Greenwich S.F., LLC v. Wong* (2010) 190 Cal.App.4th 739, 766 [a lost profits claim for breach of a real property sales agreement was inherently uncertain and speculative where a proposed development project involve numerous variables] with *A & M Produce Co. v. FMC Corp.* (1982) 135 Cal.App.3d 473, 493-494 [reasonably reliable evidence supported award of consequential damages].) The expert's testimony in this case based upon actual past performance was sufficiently reliable to support the jury's award.

DISPOSITION

The judgment is affirmed. The respondents shall recover their costs on appeal.

MCCONNELL, P. J.

WE CONCUR:

BENKE, J.

IRION, J.